

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

In the Matter of CADILLAC INSURANCE COMPANY,  
IN LIQUIDATION

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BILL SCHUETTE, Attorney General  
of the State of Michigan, ex rel  
ANN E. FLOOD, Director of the  
Department of Insurance and Financial Services  
of the State of Michigan,

File No.: 89-64126-CR

Hon. William E. Collette

Petitioners,

vs.

CADILLAC INSURANCE COMPANY,  
a Michigan Corporation,

Respondent.

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MARK J. ZAUSMER (P31721)  
Special Assistant Attorney General  
AMY SITNER APPLIN (P46900)  
ZAUSMER, KAUFMAN, AUGUST  
& CALDWELL, P.C.  
Attorneys for Petitioners  
31700 Middlebelt Road, Suite 150  
Farmington Hills, MI 48334  
(248) 851-4111

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**PETITION FOR ORDER DECLARING FURNITURE ABANDONED AND ALLOWING  
RECEIVER TO DISPOSE OF FURNITURE ACCORDINGLY  
AND BRIEF IN SUPPORT**

NOW COMES Ann E. Flood, Director of the Department of Insurance and Financial  
Services for the State of Michigan, in her capacity as Receiver/Liquidator of Cadillac Insurance  
Company ("Cadillac"), through her attorneys, ZAUSMER, KAUFMAN, AUGUST &

CALDWELL, P.C., and, consistent with the authority granted to her and to this Court under former Chapter 78 of the Michigan Insurance Code of 1956, asks the Court to enter an Order (1) finding that certain furniture in the possession of the Cadillac receivership be deemed abandoned absent timely contact by the owner to make arrangements to pick up the furniture consistent with the prior agreement of the owner and the Receiver; and (2) upon the furniture being deemed abandoned, permitting the Deputy Receiver to dispose of the furniture in an appropriate manner. In support of this Petition, the Receiver/Liquidator relies on the accompanying Brief.

Respectfully Submitted,

ZAUSMER, KAUFMAN, AUGUST  
& CALDWELL, P.C.

  
MARK J. ZAUSMER (P31721)  
AMY S. APPLIN (P46900)  
Attorneys for Petitioner  
31700 Middlebelt, Suite 150  
Farmington Hills, MI 48334  
(248) 851-4111

Dated: February 3, 2014

**BRIEF IN SUPPORT OF**  
**PETITION FOR ORDER DECLARING FURNITURE ABANDONED AND ALLOWING**  
**RECEIVER TO DISPOSE OF FURNITURE ACCORDINGLY**

Introduction

The Cadillac receivership has a longstanding agreement with the parent company of Cadillac – currently known as EMS Enterprises, Inc. (“EMS”), under which Cadillac has indefinite use of certain EMS-owned office furniture during the existence of the receivership. Under the agreement, when the receivership no longer needs the furniture, upon 30 days written notice, EMS “shall” make arrangements to pick up the furniture at its own expense. Consistent with the agreement, the receivership provided EMS – in October 2013 – with ample written

notice that the furniture was available to be picked up. But EMS has failed and/or refused to make arrangements to pick up the furniture, despite multiple attempts on behalf of the receivership to reach out to make such arrangements. As a result, the receivership is in the position of being left with furniture it does not need or want, and apparently will be obligated to expend time, effort and money to deal with this issue. Although theoretically the Receiver could file an action to enforce the terms of the agreement requiring EMS to pick up the furniture and to pay the related expense, the Receiver asks, instead, that the Court enter an order deeming the furniture to be abandoned absent timely action by EMS to make arrangements and pick up the furniture at its own expense. Upon entry of such an order, the Receiver would be free to deal with the furniture in an appropriate manner, consistent with the overall timetable for closure of the estate, as approved in prior orders of this Court.

#### Background

The Cadillac receivership has, since its inception in 1990, made use of certain furniture that is owned by the parent company of Cadillac – currently known as EMS Enterprises, Inc. (“EMS”). In 1993, the Cadillac receivership vacated the Southfield, Michigan, office building in which Cadillac, EMS and related companies were housed at the time liquidation was ordered. The move was necessary because the building had been sold. The receivership moved to new offices in Bingham Farms, Michigan. Prior to that move, the then-Deputy Receiver negotiated a “Furniture Agreement” with Cadillac’s parent company regarding furniture owned by the parent that the receivership would take with it and use during the course of the receivership.

The “Furniture Agreement,” which is dated as of May 12, 1993, and which was amended in October, 1993, provided that “Arlan’s” (now EMS) would take ownership of 4

pieces of furniture that belonged to Cadillac (collectively defined as the “Desk”) in exchange for the Cadillac estate’s indefinite use of certain furniture belonging to Arlan’s. Furniture Agreement – attached as **Exhibit 1**. The Agreement specifically states:

2. In exchange for the Desk, Cadillac shall take possession of and have the right to use, without charge or rental whatsoever, the furniture and equipment described in Exhibit B hereto (collectively, the “Furniture”). Cadillac shall have the right to use the Furniture indefinitely until the Cadillac liquidation and any lawsuits and proceedings related thereto are complete, including, without limitation, the entire three year lease term for the new space to which Cadillac is moving . . . .
3. **Upon termination of Cadillac’s possession and use of the Furniture by the terms of this Agreement**, or at such other times as Cadillac no longer requires possession of the Furniture, **Cadillac shall provide thirty (30) days written notice (via certified mail, return receipt requested) to Arlan’s, and Arlan’s and/or Solomon shall make arrangements to pick up the Furniture at their expense.**
4. Cadillac shall, in good faith, take reasonable care of the Furniture. It is agreed that Cadillac shall make every reasonable effort to return the Furniture in like condition as received. To the extent that any of the Furniture breaks or otherwise becomes not servicable [sic] or usable, Cadillac shall have no liability to Arlan’s, Solomon, or any other party hereto as a result therefrom.

(Emphasis added).

Over the course of the receivership, over half of the Furniture has been returned to EMS on a cooperative basis. For example, in 1996, EMS requested and picked up a desk, a credenza and a chair. In 2010, at the request of EMS, the receivership returned approximately one-half of the Furniture to EMS. Subsequently, in 2010, EMS requested and picked up an 8 foot conference table and 7 chairs. And in 2012, EMS requested and picked up 6 side chairs. Affidavit of Deputy Receiver James Gerber, attached as **Exhibit 2**, at ¶¶ 5-9.

Following the final distribution of Cadillac estate assets to Class 1 claimants, which took place in the summer of 2013, the Receiver began making final plans for closure of the receivership. These plans were set forth by the Receiver in the October 23, 2013, Liquidator's Verified Petition for Finding of Compliance With Prior Court Orders, Order Approving Further Plans for Closure of the Estate and Related Relief and Interim Financial Report ("Closure Plan Petition"). Consistent with the closure plan, the receivership staff contacted EMS on October 15, 2013, by telephone to discuss mutually agreeable plans for Cadillac to return the remaining Furniture to EMS and for EMS to pick up the Furniture, consistent with the terms of the Furniture Agreement. The arrangements discussed that day were confirmed in a letter dated October 15, 2013. **Exhibit 3.** As stated in the letter, pickup of the Furniture by EMS was scheduled by mutual agreement for December 21, 2013.

After the October 15, 2013, telephone conversation and the October 15, 2013, confirming letter, and while the Closure Plan Petition was pending, EMS's counsel sent to counsel for the Receiver a letter stating that EMS was dissatisfied with regard to Furniture issues. **Exhibit 4.** Specifically, EMS asserted that the Receiver had kept the Furniture for a period that was longer than the parties originally contemplated, complained that the Receiver had not permitted EMS to have a third party potential purchaser view the Furniture at Cadillac's offices, suggested that the receivership had not taken proper care of the Furniture, and argued that EMS was entitled to receive \$300,000.00 in damages related to the Furniture. The Receiver's counsel responded to this letter on November 26, 2013, (**Exhibit 5**) pointing out that the Receiver had acted and continued to act in a manner entirely consistent with the terms of the Furniture Agreement and denying that any amount of damages with respect to the Furniture was due or warranted. With

respect to EMS's complaint that the Deputy Receiver would not permit a third party to inspect the Furniture at the receivership offices, counsel was reminded that when the Deputy Receiver had permitted such an inspection on a previous occasion, it resulted in excessive and unreasonable time demands being placed on the receivership staff. *Id.* Finally, it was pointed out that EMS had never, in the 18 years since the parties entered into the Furniture Agreement, sought relief from the Court for the alleged excessive length of use of the Furniture.

Subsequently, Ernest Solomon, the president of EMS, wrote a letter to this Court (**Exhibit 6**) dated December 10, 2013, complaining about the Furniture issue. To the extent this letter was intended to be an objection to the Liquidator's Closure Plan Petition, the letter was not received timely by the Court, and, in addition, this letter was not served on counsel for the Receiver.

On December 18, 2013, this Court heard argument on the Liquidator's Closure Plan Petition. No one appeared at the hearing on behalf of EMS. Following the hearing, the Court entered an Order Granting Liquidator's Verified Petition for Finding of Compliance With Prior Court Orders, Approving Further Plans for Closure of the Estate and for Related Relief. **Exhibit 7.** Counsel for the Receiver served a copy of this December 18, 2013, Order on counsel for EMS, with an accompanying letter asking that EMS follow up to make arrangements to pick up the Furniture on a timely basis to permit the Cadillac estate to close as contemplated in the Liquidator's Closure Plan Petition. **Exhibit 8.** A copy of this letter was sent by facsimile directly to Mr. Solomon. **Exhibit 9.**

Since early January, 2014, multiple overtures have been made on behalf of the Receiver to ask that EMS contact the receivership staff to make arrangements to pick up the Furniture.

Affidavit of Amy S. Applin, attached as **Exhibit 10**. No official response to these overtures has been received, but unofficially counsel for EMS and Mr. Solomon has indicated that EMS is, for various reasons, unable and/or unwilling to make arrangements to retrieve the furniture and does not intend to do so. As a result, the Receiver is faced with the likelihood that EMS will not pick up its Furniture so as to allow the Cadillac estate to vacate its offices in Bingham Farms as planned, consistent with the planned final closure of the offices on or about March 31, 2014.<sup>1</sup>

### Applicable Law

Under Michigan law, proof of abandonment requires a showing of intent to relinquish the property and external acts putting that intention into effect. *Ambs v Kalamazoo County Road Comm'n*, 255 Mich App 637, 652 (2003); *Ludington & Northern Ry v The Epworth Assembly*, 188 Mich App 25, 33 (1991). The documentary record here establishes that EMS has been offered multiple opportunities to make arrangements to retrieve its Furniture, consistent with the terms of the Furniture Agreement, but has failed to make any such arrangements. This Petition puts EMS on further notice that, absent actions on its part to retrieve the Furniture in conformity with the Furniture Agreement, the Receiver is asking that the Furniture be deemed abandoned so that the Receiver can deal with the Furniture accordingly. Failure to make arrangements to retrieve the Furniture under these circumstances would be, in itself, an external act further demonstrating the intention to abandon the Furniture.

The Receiver submits that, under the applicable statute and this Court's Liquidation Order, the Receiver has authority to take possession of abandoned Furniture within the

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<sup>1</sup> Due to various issues encountered in the windup and closure process, including the issue addressed in this Petition, the Receiver has pushed back the timetable for final closure by one month.

receivership's possession and to deal with such assets in an appropriate manner and in accordance with this Court's direction. Liquidation Order, **Exhibit 11**, at p 3; see also MCL 500.7814 and MCL 500.7818, attached as **Exhibit 12**.

WHEREFORE, the Receiver asks this Court to enter an Order that – if EMS does not, within seven (7) days after entry of the Order, make arrangements with the receivership staff to pick up its Furniture in a timely manner, or if EMS fails to pick up its Furniture as scheduled (absent exigent circumstances and/or agreement of the parties), the Furniture is declared by the Court to be abandoned property and the Receiver is authorized to dispose of the Furniture accordingly so as to permit timely closure of the estate consistent with the prior orders of this Court.

Respectfully Submitted,

ZAUSMER, KAUFMAN, AUGUST  
& CALDWELL, P.C.



MARK J. ZAUSMER (P31721)  
AMY S. APPLIN (P46900)  
Attorneys for Petitioner  
31700 Middlebelt, Suite 150  
Farmington Hills, MI 48334  
(248) 851-4111

Dated: February 3, 2014

00217833.DOCX



# EXHIBIT 1

AGREEMENT REGARDING FURNITURE AND EQUIPMENT

THIS AGREEMENT REGARDING FURNITURE AND EQUIPMENT (the "Agreement") is entered into this 12th day of May, 1993, by and among Ernest M. Solomon, individually and as President of Arlan's Agency, Inc. ("Arlan's"), Cadillac Insurance Company in Liquidation, Cadillac Life Insurance Company, City Premium Budget Company, Inc., World Premium Budget Service Company, Inc., (collectively "Cadillac")

WHEREAS, Cadillac is utilizing certain furniture and equipment at its offices at 31155 Northwestern Highway, Suite C, (the "Premises"), Farmington Hills, Michigan, which furniture and equipment is owned by Arlan's.

WHEREAS, Cadillac owns a desk and credenzas which Solomon and Arlan's desire to own.

WHEREAS, Cadillac, Arlan's, and Solomon are moving their respective offices from 31155 Northwestern Highway, and desire to enter into this Agreement regarding the use and disposition of furniture and equipment presently utilized and/or owned by Cadillac, Arlan's, and/or Solomon.

NOW, THEREFORE in consideration of the premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. For the consideration described in paragraph 2 below, Arlan's shall take ownership of, and remove from the Premises, the desk and three credenzas (collectively, the "Desk"), which are more specifically described in Exhibit A hereto. Arlan's shall remove the desk at its expense on or before June 1, 1993, and Arlan's shall be solely responsible for any damages caused to the Premises as a result of said removal. Arlan's and Solomon agree to indemnify Cadillac from any expense, cost, claim or liability which arises out of or results from the removal of the Desk. Arlan's takes ownership of the Desk on an "as is" basis, and Cadillac makes no warranty or representations as to the condition of the Desk.

2. In exchange for the Desk, Cadillac shall take possession of and have the right to use, without any charge or rental whatsoever, the furniture and equipment described in Exhibit B hereto (collectively, the "Furniture"). Cadillac shall have the right to use the Furniture indefinitely until the Cadillac liquidation and any lawsuits and proceedings related thereto are complete, including, without limitation, the entire three year lease term for the new space to which Cadillac is moving. Cadillac's use of the furniture is on an "as is" basis, and neither Solomon nor Arlan's warrants or represents in any way the condition of the Furniture.

3. Upon termination of Cadillac's possession and use of the Furniture by the terms of this Agreement, or at such other times as Cadillac no longer requires possession of the Furniture, Cadillac shall provide thirty (30) days written notice (via certified mail, return receipt requested) to Arlan's, and Arlan's and/or Solomon shall make arrangements to pick up the Furniture at their expense.

4. Cadillac shall, in good faith, take reasonable care of the Furniture. It is agreed that Cadillac shall make every reasonable effort to return the Furniture in like condition as received. To the extent that any of the Furniture breaks or otherwise becomes not servicable or usable, Cadillac shall have no liability to Arlan's, Solomon, or any other party hereto as a result therefrom.

5. Arlan's and Solomon represent and warrant that all of the Furniture described in Exhibit B hereto is owned by Arlan's.

6. This Agreement is binding on the parties hereto, their successors and assigns, and is binding on any other entity owned and/or controlled by Solomon.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ARLAN'S AGENCY, INC.,

BY:

Ernest M. Solomon

ITS: President

Ernest M. Solomon

CADILLAC INSURANCE COMPANY IN LIQUIDATION  
and its wholly owned assets/subsidiaries,  
CADILLAC LIFE INSURANCE COMPANY  
CITY PREMIUM BUDGET COMPANY, INC.  
WORLD PREMIUM BUDGET SERVICE COMPANY, INC.

BY:

  
Jacqueline Reese, Deputy Receiver

EXHIBIT A

ARLANS AGENCY, INC.

Furniture Description/Inventory Listing

1 Special - Essex Double Pedestal Desk Consisting of  
(1) 96"W x 42"D Top with 3 sided 7" overhang  
(2) 48"W x 27"D return with 7" overhang (left)  
(3) Right Hand return is mirror image of (2) above  
Continuous Box Base, Finish: Antique

3 pieces of glass have been cut to fit

3 Special -- Essex Series Credenzas 105"W x 21"D finish: Antique

3 pieces of glass over each of the three credenzas

Exhibit A

Cadillac Insurance Company, In Liquidation  
Furniture Description/Inventory Listing

LOBBY AREA - SPACE NO. 100

- 1 Metro Tiburon Series Modular Seating (armless) Fabric: Cabernet
- 1 Bernhardt Drum Table, Sapela Finish, 18"W x 18"D x 16"H
- 1 Tree in brass container (doesn't have to be brass)

MICHELE/RECEPTION AREA SPACE NO. 200

- 1 Single Pedestal Desk 72" x 36" with pedestal on right, return on left 48" x 24" with back panel - finish: mahogany
- 1 four drawer credenza 24" x 60", finish: mahogany
- 1 desk chair
- 1 plant in pot

COMMON AREA AROUND MICHELE SPACE NO. 201

- 1 45"W four drawer lateral file cabinets - finish: mahogany
- 1 Storage cabinet, 36" x 41 1/2" w two adjustable shelves, color: grey value

FILE ROOM AREA ADJACENT TO MICHELE SPACE NO. 202

- 1 Storage Cabinet, 36" x 41 1/2" w adjustable shelves - color: grey value
- 5 Storage Racks (open shelving) 36" x 18"

JACKIE'S OFFICE - SPACE NO. 300

- 1 round conference table, 29" x 48" dia., finish mahogany
- 1 Essex series desk, 76" x 42" double pedestal, finish mahogany
- 1 Essex series credenza, finish mahogany
- 6 Hickory business furniture side chairs with cone back and upholstered seat with cherry wood finish, fabric: boysenberry
- 1 desk chair
- 1 tree in brass container

Exhibit B cont.

Page Two

PAT'S OFFICE SPACE NO 301

- 1 70" x 35" single pedestal desk with right return 45" x 24" and back sect.  
70" x 35" with two drawer lateral file ped. finish: mahogany  
*(This is currently located in Mike Grandstaff's office and is  
formerly Chito Castro's furniture)*
- 1 lateral file 60"x 25" with four legal size drawers, finish: mahogany
- 2 side chairs
- 1 desk chair      1 42" round conf. table with chrome ped base, finish:  
mahogany

ACCOUNTING/DOCUMENT FILE ROOM - SPACE NO. 302

- 12 five drawer file cabinets , 36" x 18"

JAN'S OFFICE - SPACE NO. 303

- 1 Right hand single pedestal desk 67½"x 34½ x 29 5/8" with left return of  
of 37½x 21½, finish mahogany
- 1 matching credenza unit 87" x 19", finish mahogany
- 2 David Edward pull-up chairs - tight seat and back, solid mahogany, mauve  
fabric
- 4 David Edward pull-up chairs - tight seat and back, solid mahogany, grey/  
mauve patterned fabric
- 1 round conference table, 29"H x 48 dia, finish mahogany, includes glass  
top
- 1 desk chair

AARON'S OFFICE SPACE NO. 304

- 1 Movable Wall 72" x 30" desk finish is grey value with walnut stained  
mahogany wood top with left return 48" x 24" with back section of 72"  
x 24" both return and back are grey value paint with walnut stained  
mahogany wood top
- 2 35" x 29" H two drawer lateral files, finish mahogany
- 2 side chairs
- 1 desk chair



EMPLOYEE LUNCHROOM - SPACE NO. 305

- 1 Steelcase Series 8500 Table round 42" in diam
- 4 snodgrass side chairs with arms and open back, polished chrome, fabric: berries/mulberry
- 1 Portable GE compact refrigerator - TA7SJ, 6.6 cu ft capacity, 24" wide
- 1 Storage cabinet, 36" x 41½ w two adjustable shelves, color grey value

TONY'S OFFICE SPACE NO. 306

- 1 Movable Wall 72" x 30" desk finish grey value with walnut stained mahogany wood top with right return of 48" x 24" and back section of 72" x 24" both return and back in grey value paint with walnut stained mahogany wood top
- 2 35" x 29" h two drawer lateral files, finish is mahogany
- 2 side chairs
- 1 desk chair

LARRY'S OFFICE SPACE NO. 307

- 1 Double Pedestal Desk 72" x 36"
- 1 Matching credenza, 72" x 24"
- 2 england chair - black leather stainless steel frame
- 1 Tree in chrome container
- 1 desk chair

CONFERENCE ROOM SPACE NO. 308

- 1 8' Conference Table - traditional style, Finish: Antique Mahogany
- 8 Italian Provincial Arm Chairs with exposed wood frame, bottle green leather
- 1 matching credenza
- 1 plant

Exhibit B cont.

Page Four

FILE ROOM - SPACE NO. 309

3 filing unit racks - all connected wall units 72" x 12"

*Plastic wastebaskets and accessories as needed.*

A M E N D M E N T

AGREEMENT REGARDING FURNITURE AND EQUIPMENT

The Agreement Regarding Furniture and Equipment, effective May 12, 1993, is hereby amended to include all items described in Exhibit C attached hereto.

The attachment of Exhibit C shall become effective and become a part of the Agreement Regarding Furniture and Equipment as of May 12, 1993.

All provisions and terms of the Agreement Regarding Furniture and Equipment remain unchanged and in full force and effect.

ARLAN'S AGENCY, INC.,

BY:

ERM Solomon  
Ernest M. Solomon

ITS: President

ERM Solomon  
Ernest M. Solomon

CADILLAC INSURANCE COMPANY, IN LIQUIDATION  
and its wholly owned assets/subsidiaries,  
CADILLAC LIFE INSURANCE COMPANY  
WORLD PREMIUM BUDGET COMPANY, INC.  
CITY PREMIUM BUDGET COMPANY, INC.

BY:

Jacqueline Reese  
Jacqueline Reese, Deputy Receiver

Dated: 10-28-93

EXHIBIT C

ACCESSORIES

Michele's Desk

(All Brass)  
Rolodex  
Note Paper Holder  
Waste Basket  
Message Holder  
Calendar Holder  
In/Out Basket  
Blotter

Jan's Desk

(All Brass)  
Calendar Holder  
Scissors/Letter Opener Holder  
In/Out Basket  
Desk Blotter  
Waste Basket  
Rolodex

Miscellaneous

9 Plastic Waste Baskets (White)  
8 Wire Baskets  
3 Desk Blotters  
4 In/Out Plastic Trays (White)  
1 Tape Dispenser (Grey)  
3 Desk Chairs

Equipment

1 CRS Calculator - Serial No. 155649 (Jaho)  
1 Casio Calculator - Serial No. 9213968 (MAdkins)  
1 Max P.D. 122 Calculator - Serial No. D85M89755 (JReese)  
1 CRS Calculator - Serial No. 157744 (LKalosis)  
1 Casio DI 220 Calculator - Serial No. 9212172 (TNowak)  
1 CRS 2200 Calculator - Serial No. 157743 (AAho)  
1 Casio 1200 Calculator - Serial No. 175311 (storage)  
1 Casio DL250 Calculator - Serial No. 3231717 (storage)  
1 CRS 2200 Calculator - Serial No. 155620 (storage)  
1 Casio 220 Calculator Serial No. 9213966 (Storage)

## EXHIBIT 2

Zausmer Kaufman, August & Caldwell, P.C.  
31700 Middlebelt Road, Suite 150, Farmington Hills, Michigan 48334-2374 | 21 N. Capitol, Suite 2, Lansing, MI 48906-5163

In the Matter of CADILLAC INSURANCE COMPANY,  
IN LIQUIDATION

Hon. William E. Collette

vs.

Respondent.

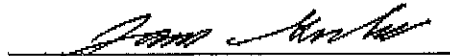
**AFFIDAVIT OF JAMES GERBER**

STATE OF MICHIGAN )  
Ingham ) ss.  
COUNTY OF OAKLAND )

1. The facts set forth below are known to me to be true and, if sworn as a witness, I can testify competently to the facts set forth below.

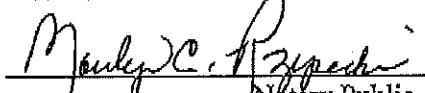
2. I am the approved Deputy Receiver for Cadillac Insurance Company ("Cadillac").
3. As Deputy Receiver I am generally familiar with the books and records of Cadillac, including the Furniture Agreement executed in 1993 by and between then-Deputy Receiver Jaqueline Reese and Cadillac's parent company, which is now known as EMS Enterprises, Inc.
4. I am also familiar with the property that has been and currently is in the possession of the Cadillac receivership, including the furniture described in the Furniture Agreement (the "Furniture").
5. Over the course of the receivership, over half of the Furniture has been returned to EMS on a cooperative basis.
6. For example, in 1996, EMS requested and picked up a desk, a credenza and a chair.
7. In 2010, at the request of EMS, the receivership returned approximately one-half of the Furniture to EMS.
8. Subsequently, in 2010, EMS requested and picked up an 8 foot conference table and 7 chairs.
9. In 2012, EMS requested and picked up 6 side chairs.

FURTHER AFFIANT SAYETH NOT.

  
JAMES GERBER

STATE OF MICHIGAN     )  
                                  *Oregon*     ) ss.  
COUNTY OF OAKLAND     )

On the 3rd day of February, 2014, before me personally appeared James Gerber, to me known to be the person described in and who executed the foregoing instrument, and acknowledged before me that he executed the same as his free act and deed.

  
\_\_\_\_\_, Notary Public  
State of Michigan, County of *Eaton*  
My commission expires: *8-3-2017*  
Acting in the County of *Oregon*

MARILYN C RZEPECKI  
Notary Public - Michigan  
Eaton County  
My Commission Expires Aug 3, 2017  
Acting in the County of *Oregon*

# EXHIBIT 3





# Cadillac Insurance Company, In Liquidation

30800 Telegraph Road, Suite 1705  
Bingham Farms, MI 48025

October 15, 2013

Mr. Ernest M. Solomon  
30095 Northwestern Highway  
Farmington Hills, Michigan 48334

RE: FURNITURE AGREEMENT

Dear Mr. Solomon:

This shall confirm our telephone conversation of October 15, 2013 wherein we discussed the return of your furniture per the agreement entered into at the onset of the Cadillac Insurance Company liquidation ("Cadillac").

As I informed you, we anticipate final closure and lease termination of our offices at 30800 Telegraph Road, Suite 1705, in the early months, January and February, 2014. In working with both of our schedules, you agreed to accommodate the proposed timeline of Cadillac as follows:

- EMS commits to the removal of the majority of his furniture from the offices of Cadillac on Saturday, December 21, 2013
- Cadillac will retain Jan's desk and the accounting desk until the last week of February 2014
- Cadillac, Jan, will work with your staff to coordinate the move of the furniture under the guidelines and rules required by Cadillac's landlord
- Cadillac will provide written inventory of furniture and items (accessories, equipment, etc.) being returned.
- EMS – will provide Cadillac with an up-to-date inventory of all items to be returned by Cadillac. These inventories will be used by both parties to insure a smooth return of inventory.
- Cadillac will coordinate the return of the furniture remaining at Cadillac the last week of February 14.
- Please keep in mind that moving day is Saturday. Jan will work on Saturday's (at no charge to Cadillac or EMS) to coordinate both moving dates.

I am pleased that my schedule did not interfere with your plans and thank you for your cooperation. I am confident we can continue to work cooperatively to an efficient transition.

Sincerely,

CADILLAC INSURANCE COMPANY, IN LIQUIDATION

Jan Aho, On-Site Manager

Cc: J. Gerber, Deputy Receiver

## EXHIBIT 4

## FRIED PORTER PLLC

ATTORNEYS AT LAW  
29800 TELEGRAPH ROAD  
SOUTHFIELD, MICHIGAN 48034

LOUIS J. PORTER  
TEL (248) 354-1505  
FAX (248) 355-2141  
E-MAIL: [LPORTER@FRIEDPORTER.COM](mailto:LPORTER@FRIEDPORTER.COM)

OF COUNSEL  
FRIED SAPERSTEIN ABBATT P.C.

November 21, 2013

Mark J. Zausmer, Esq.  
Zausmer Kaufman August & Caldwell PC  
31700 Middlebelt Rd Ste 150  
Farmington Hills, MI 48334

RE: In the Matter of Cadillac Insurance Company, In Liquidation  
Commissioner of Insurance vs. Cadillac Insurance Company  
Case No. 89-64126-CR

Re: In the Matter of Cadillac Insurance Company In Liquidation,  
File No.: 89 64126 CK

Dear Mr. Zausmer

I am in receipt of the Liquidator's Verified Petition For Finding Of Compliance With Prior Court Orders, Order Approving Further Plans For Closure Of The Estate And Related Relief And Interim Financial Report.

I am writing on behalf of Ernest Solomon and EMS Enterprises regarding their positions with respect to the relief requested. A number of issues remain unresolved which could impair the closure of the estate. Rather than bring these matters to the Court and cause either the Commissioner or Ernest Solomon or EMS Enterprises unnecessary expense we are first bringing a matter to your attention with the hope of some amicable resolution that will address with finality all outstanding issues that could be raised.

As you are aware the issues surrounding office furniture has been a frequent source of frustration and irritation for both parties with a great deal of correspondence having been devoted to the topic. The furniture agreement was part of the global settlement agreement. The office furniture, valued at over \$600,000 was loaned to the receivership with the expectation that it would be returned in three years. Instead, it has been 22 years.

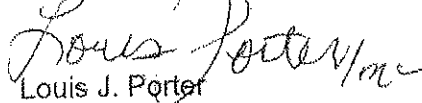
November 21, 2013  
Page 2 of 2

In October Mr. Solomon received a proposal to purchase the furniture if the furniture was in good condition. Mr. Solomon's efforts to permit the purchaser to examine the condition of the furniture were flatly rebuffed by the deputy receiver saying the receivership was unwilling to let their offices serve as "showroom" for Mr. Solomon's furniture under any circumstances. Instead of being allowed the courtesy, Mr. Solomon is to come in and pick up his furniture sight unseen late in December. As a result of this approach the purchaser withdrew any interest in acquiring the furniture.

Mr. Solomon is demanding \$300,000 in full and complete settlement. In lieu thereof, he is prepared to contest the petition to close the estate on these and other grounds.

Sincerely,

FRIED PORTER, PLLC

  
Louis J. Porter

LJP

## EXHIBIT 5

Mark J. Zausmer  
Richard C. Kaufman  
Gary K. August  
Michael L. Caldwell  
Michael C. Lewis  
Heidi D. Hudson  
Mischa M. Boardman<sup>1</sup>  
Nicole M. Wright  
Matthew G. McNaughton  
Cameron R. Getto  
Cinnamon A. Rice  
Amy Sither Applin

FARMINGTON HILLS  
31700 Middlebelt Road, Suite 150  
Farmington Hills, MI 48334-2374

(248) 851-4111 phone  
(248) 851-0100 fax

<sup>1</sup>Also Admitted in IL  
<sup>2</sup>Also Admitted in KY  
<sup>3</sup>Also Admitted in OH

**Z|K|A|C**  
Zausmer, Kaufman, August & Caldwell, P.C.  
FARMINGTON HILLS & LANSING

Elizabeth R. Amone  
Jason W. Baas  
Emily M. Ballenberger  
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Michael A. Schwartz  
Devin R. Sullivan<sup>1</sup>  
Lauren M. Wawrzyniak  
James C. Wright<sup>3</sup>  
Kyle T. Zwirn

November 26, 2013

Louis J. Porter, Esq.  
Fried Porter PLLC  
29800 Telegraph Road  
Southfield, MI 48034

RE: In the Matter of Cadillac Insurance Company, In Liquidation  
Commissioner of Insurance vs. Cadillac Insurance Company  
Case No. 89-64126-CR  
Our File No. 1080-0000L

Dear Mr. Porter:

This is in response to your November 21, 2013, letter addressed to Mark Zausmer regarding the captioned matter. We have consulted with the Deputy Liquidator regarding your letter, and he has asked us to advise you that he finds no merit in Mr. Solomon's demand and is not inclined to recommend a settlement with Mr. Solomon in any amount based on the issue raised in your letter.

As I expect you know, the Furniture Agreement, which is dated as of May 12, 1993, and which was amended in October, 1993, provided that "Arlan's" – now EMS Enterprises, Inc. – would take ownership of 4 pieces of furniture that belonged to Cadillac (collectively defined as the "Desk") in exchange for the Cadillac estate's indefinite use of certain furniture belonging to Arlan's. The Agreement specifically states:

2. In exchange for the Desk, Cadillac shall take possession of and have the right to use, without charge or rental whatsoever, the furniture and equipment described in Exhibit B hereto (collectively, the "Furniture"). Cadillac shall have the right to use the Furniture indefinitely until the Cadillac liquidation and any lawsuits and proceedings related thereto are complete, including, without limitation, the entire three year lease term for the new space to which Cadillac is moving . . . .
3. Upon termination of Cadillac's possession and use of the Furniture by the terms of this Agreement, or at such other times as Cadillac no longer requires possession of the Furniture, Cadillac shall provide thirty (30) days written notice (via certified mail, return receipt requested) to Arlan's, and Arlan's and/or Solomon shall make arrangements to pick up the Furniture at their expense.
4. Cadillac shall, in good faith, take reasonable care of the Furniture. It is agreed that Cadillac shall make every reasonable effort to return the Furniture in like condition as

ATTORNEYS & COUNSELORS  
www.zkac.com

# Z K A C

Zausmer, Kaufman, August & Caldwell, P.C.  
ATTORNEYS & COUNSELORS

Louis J. Porter, Esq.  
November 26, 2013  
Page 2

received. To the extent that any of the Furniture breaks or otherwise becomes not servicable (sic) or usable, Cadillac shall have no liability to Arlan's, Solomon, or any other party hereto as a result therefrom.

The suggestions in your letter that the parties contemplated that the Furniture would be retained by the Cadillac estate for some time period other than "indefinitely" and that Arlan's/EMS could be entitled to some additional payment or remuneration in connection with Cadillac's use of the Furniture are inconsistent with the plain language of the Furniture Agreement. Similarly, the Furniture Agreement does not provide Arlan's/EMS with any right of access to or right to "show" the Furniture on the premises of the Cadillac estate.

If Arlan's/EMS was dissatisfied with the terms of the Furniture Agreement, it had the opportunity to renegotiate those terms as part of the Global Settlement between the parties. Instead, as referenced in your letter, the terms of the Furniture Agreement were specifically ratified and continued by the parties when the Global Settlement Agreement was executed in July 1995. Moreover, Mr. Solomon has not pursued any alleged claim related to the Furniture over the ensuing 18 years. The Cadillac estate has acted entirely within its rights under the Furniture Agreement, and has continued to honor its obligations under the Agreement by providing EMS and Mr. Solomon with well in excess of 30 days written notice that the Furniture will be available to be picked up in connection with the anticipated closing of the Cadillac estate.

By way of history, in the past the Deputy Liquidator granted a request by Mr. Solomon to allow an interested party to view the Furniture at the offices of the Cadillac estate. However, in practice, this situation caused excessive and unreasonable time demands to be placed on the receivership staff, with the result that the Deputy Liquidator is no longer willing to allow "showings" of the Furniture.

We anticipate that Judge Collette will also find no merit to Mr. Solomon's claims with regard to the Furniture Agreement, but Mr. Solomon can feel free to bring these issues to Judge Collette's attention in response to the pending Petition.

With regard to other, unspecified, issues referred to in your letter, the Deputy Liquidator will review and respond to any additional written objections, demands or complaints that Mr. Solomon wishes to raise on a formal or informal basis.

Sincerely yours,

ZAUSMER, KAUFMAN, AUGUST  
& CALDWELL, P.C.

  
Amy S. Applin

ASA:dmt  
cc: Jim Gerber  
(00194968.DOCX)

## EXHIBIT 6



**ERNEST M. SOLOMON**

30095 Northwestern Hwy, Suite 30A, Farmington Hills, MI 48334  
Ph: (248) 737-7900 ✧ Cell: (248) 933-5217 ✧ Fx: (248) 737-1639

December 10, 2013

Hon. William E. Collette  
Ingham County Circuit Court  
3<sup>rd</sup> Floor, County Courthouse  
Mason, MI 48854

RE: Cadillac Insurance Company in Liquidation  
My Furniture

Dear Judge Collette:

I am writing in reference to my furniture that I allowed the Estate of Cadillac Insurance to use for a period of 3 years which has now developed into their usage of my furniture for over 20 years.

I had someone that wanted to buy this executive furniture for approximately \$600,000 but the people at the Estate of Cadillac would not allow my buyer to look at the furniture. They told me they would not allow the "Cadillac's offices to act as a showroom for my selling of my furniture". I never even had the chance to go back to Cadillac with my movers to see how much furniture was there to compute the size of truck and number of movers needed in order to move my furniture.

I continue to maintain Louis Porter as my attorney.

I am enclosing a number of letters that my Attorney has sent to Cadillac's attorneys to try and resolve this matter. Whether you have received the letters or not, I do not know. I am writing this letter to try and resolve this matter. I am sure that after you have read these letters you will understand what I am referring to.

At this point nothing is happening relative to me getting my furniture back or me being paid for the excessive use of my furniture. I do not even know the condition of my furniture since I haven't seen it in a number of years.

The purpose of me writing you is that I would hope you would not close the Estate of Cadillac until the furniture issue has been resolved. We have two good attorneys in Mr. Porter and Mr. Zausmer. I am sure both of them can get together and come up with a good resolution to settle this matter.

Very truly yours,

*E. M. Solomon*

E. M. Solomon

EMS/psj

Enclosures

CC: Louis Porter, Atty.

RECEIVED

DEC 12 2013

WILLIAM E. COLLETTE  
CIRCUIT JUDGE

# *EMS ENTERPRISES, INC.*

---

30095 Northwestern Hwy, Suite 30A

Farmington Hills, MI 48334

Phone: (248) 737-7900 ♦ Fax: (248) 737-1639

December 5, 2013

Lou Porter, Attorney  
Fried Porter PLLC  
29800 Telegraph Rd.  
Southfield, MI 48034

RE: My Furniture at Cadillac in Liquidation's Office

Dear Lou:

I am again writing with an effort to try and retrieve my furniture at Cadillac Insurance. The reason I didn't pursue getting my furniture back a few years ago was they threatened me with sanctions if I lost. I couldn't take a chance.

As you know by me lending my furniture to Cadillac Insurance in Liquidation back in 1993 I was under the impression and was told by the Deputy Liquidator that they would only be using my furniture for approximately 3 years. That 3 years has turned into over 20 years.

I am now told by the people at Cadillac that I can pick up my furniture as they are attempting to close the Estate. When I had the opportunity to sell the furniture for \$600,000 I was told I would not be allowed to let my buyer inspect the furniture before he paid me the \$600,000 and that I would have to remove the furniture from their office to another location to let my buyer inspect the furniture at a new location.

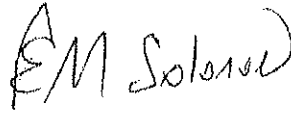
The people at Cadillac set up a date on Saturday, December 21, 2013, for me to arrange for movers to take the furniture out of Cadillac's office.

I am sure you are aware, even though I am 82 years old, I still work 6 days a week, including on Saturdays where City Wide Leasing and North End Collision have set up appointments for me. Therefore, I will not be able to meet their schedule for me to arrange pick up of my furniture on Saturday the 21<sup>st</sup>, 2013 as I will be working on that date. If there are no appointments for me on that day, it is the Jewish Sabbath and I will be attending the synagogue on that morning.

By not being allowed to see my furniture that is located at Cadillac's office, I have no idea of how many employees or trucks a moving company needs and how much time it would take the movers to move everything out of Cadillac's office.

Therefore, I will not be able to meet Ms. Aho's schedule of December 21, 2013. Since they did not want to allow my buyer (\$600,000) to look at the furniture before he pays me and will not allow me to look at my furniture before I employ a moving company to move to another location. I assume the furniture must be in very bad condition.

Very truly yours,  
EMS Enterprises, Inc.

A handwritten signature in black ink, appearing to read "E M Solomon". The signature is written in a cursive, somewhat stylized font.

E. M. Solomon, President

EMS/psj

## **ERNEST M. SOLOMON**

---

30095 Northwestern Hwy, Suite 30A, Farmington Hills, MI 48334  
Ph: (248) 737-7900 ✧ Cell: (248) 933-5217 ✧ Fx: (248) 737-1639

October 23, 2013

Lou Porter, Atty.  
29800 Telegraph  
Southfield, MI 48034

Fax: 1-248-355-1505

RE: My Furniture at Cadillac Insurance Company's Office

Dear Lou:

Today I called the Liquidator at Cadillac's office on Telegraph and told them I would like to bring someone over that was interested in buying the furniture so he would be able to see the condition of that furniture and determine a price. Otherwise I would have to make arrangements for moving it at a substantial cost.

I was told by Jan Aho, who said she just asked Jim Gerber as to whether I could bring someone to look at the furniture to determine the condition of the furniture. She said Jim Gerber (and she agreed with him) that Cadillac's office "is not a showroom for selling Ernie Solomon's furniture" and she said that I would have to take the furniture away before I could show the furniture to anyone.

I told them I was very disappointed in that Cadillac was making me spend a substantial amount of money by moving the furniture to another location in order to sell it. I should have had the furniture back over 10 years ago. I was told by Jackie Reese, in 1993, CIC would only need the furniture for 3 to 4 years.

I told her that all I wanted to do was to show the potential buyer of the furniture the condition of the furniture so that we could determine a price for the furniture. She said I'm sorry but that's the order she got from Jim Gerber. I said to her if that's the final decision all I can do is to refer the matter to my Attorney, Lou Porter and we said Good-Bye.

We anticipated this would happen in that anything that they could do to try to hurt Ernie Solomon they will do it.

Very truly yours,

E. M. Solomon

EMS/psj



# Cadillac Insurance Company, In Liquidation

30800 Telegraph Road, Suite 1705  
Bingham Farms, MI 48025

October 15, 2013

Mr. Ernest M. Solomon  
30095 Northwestern Highway  
Farmington Hills, Michigan 48334

RE: FURNITURE AGREEMENT

Dear Mr. Solomon:

This shall confirm our telephone conversation of October 15, 2013 wherein we discussed the return of your furniture per the agreement entered into at the onset of the Cadillac Insurance Company liquidation ("Cadillac").

As I informed you, we anticipate final closure and lease termination of our offices at 30800 Telegraph Road, Suite 1705, in the early months, January and February, 2014. In working with both of our schedules, you agreed to accommodate the proposed timeline of Cadillac as follows:

- EMS commits to the removal of the majority of his furniture from the offices of Cadillac on Saturday, December 21, 2013
- Cadillac will retain Jan's desk and the accounting desk until the last week of February 2014
- Cadillac, Jan, will work with your staff to coordinate the move of the furniture under the guidelines and rules required by Cadillac's landlord
- Cadillac will provide written inventory of furniture and items (accessories, equipment, etc.) being returned.
- EMS – will provide Cadillac with an up-to-date inventory of all items to be returned by Cadillac. These inventories will be used by both parties to insure a smooth return of inventory.
- Cadillac will coordinate the return of the furniture remaining at Cadillac the last week of February 14.
- Please keep in mind that moving day is Saturday. Jan will work on Saturday's (at no charge to Cadillac or EMS) to coordinate both moving dates.

I am pleased that my schedule did not interfere with your plans and thank you for your cooperation. I am confident we can continue to work cooperatively to an efficient transition.

Sincerely,

CADILLAC INSURANCE COMPANY, IN LIQUIDATION

Jan Aho, On-Site Manager

Cc: J. Gerber, Deputy Receiver

## **FRIED PORTER PLLC**

ATTORNEYS AT LAW

29800 TELEGRAPH ROAD  
SOUTHFIELD, MICHIGAN 48034

**LOUIS J. PORTER**

TEL (248) 354-1505

FAX (248) 355-2141

E-MAIL: [LPORTER@FRIEDPORTER.COM](mailto:LPORTER@FRIEDPORTER.COM)

OF COUNSEL

FRIED SAPERSTEIN ABBATT P.C.

November 21, 2013

Mark J. Zausmer, Esq.  
Zausmer Kaufman August & Caldwell PC  
31700 Middlebelt Rd Ste 150  
Farmington Hills, MI 48334

RE: In the Matter of Cadillac Insurance Company, In Liquidation  
Commissioner of Insurance vs. Cadillac Insurance Company  
Case No. 89-64126-CR

Re: In the Matter of Cadillac Insurance Company In Liquidation,  
File No.: 89 64126 CK

Dear Mr. Zausmer

I am in receipt of the Liquidator's Verified Petition For Finding Of Compliance With Prior Court Orders, Order Approving Further Plans For Closure Of The Estate And Related Relief And Interim Financial Report.

I am writing on behalf of Ernest Solomon and EMS Enterprises regarding their positions with respect to the relief requested. A number of issues remain unresolved which could impair the closure of the estate. Rather than bring these matters to the Court and cause either the Commissioner or Ernest Solomon or EMS Enterprises unnecessary expense we are first bringing a matter to your attention with the hope of some amicable resolution that will address with finality all outstanding issues that could be raised.

As you are aware the issues surrounding office furniture has been a frequent source of frustration and irritation for both parties with a great deal of correspondence having been devoted to the topic. The furniture agreement was part of the global settlement agreement. The office furniture, valued at over \$600,000 was loaned to the receivership with the expectation that it would be returned in three years. Instead, it has been 22 years.

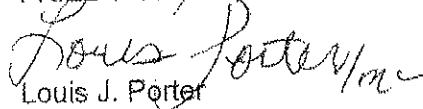
November 21, 2013  
Page 2 of 2

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Mr. Solomon is demanding \$300,000 in full and complete settlement. In lieu thereof, his is prepared to contest the petition to close the estate on these and other grounds.

Sincerely,

FRIED PORTER, PLLC

  
Louis J. Porter

LJP

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Lauren M. Wawrzyniak  
James C. Wright<sup>2</sup>  
Kyle T. Zwiren

November 26, 2013

Louis J. Porter, Esq.  
Fried Porter PLLC  
29800 Telegraph Road  
Southfield, MI 48034

RE: In the Matter of Cadillac Insurance Company, In Liquidation  
Commissioner of Insurance vs. Cadillac Insurance Company  
Case No. 89-64126-CR  
Our File No. 1080-0000L

Dear Mr. Porter:

This is in response to your November 21, 2013, letter addressed to Mark Zausmer regarding the captioned matter. We have consulted with the Deputy Liquidator regarding your letter, and he has asked us to advise you that he finds no merit in Mr. Solomon's demand and is not inclined to recommend a settlement with Mr. Solomon in any amount based on the issue raised in your letter.

As I expect you know, the Furniture Agreement, which is dated as of May 12, 1993, and which was amended in October, 1993, provided that "Arlan's" – now EMS Enterprises, Inc. – would take ownership of 4 pieces of furniture that belonged to Cadillac (collectively defined as the "Desk") in exchange for the Cadillac estate's indefinite use of certain furniture belonging to Arlan's. The Agreement specifically states:

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www.zkac.com



# Z K A C

Zausmer, Kaufman, August & Caldwell, P.C.  
ATTORNEYS & COUNSELORS

Louis J. Porter, Esq.

November 26, 2013

Page 2

received. To the extent that any of the Furniture breaks or otherwise becomes not servicable (sic) or usable, Cadillac shall have no liability to Arlan's, Solomon, or any other party hereto as a result thereof.

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We anticipate that Judge Collette will also find no merit to Mr. Solomon's claims with regard to the Furniture Agreement, but Mr. Solomon can feel free to bring these issues to Judge Collette's attention in response to the pending Petition.

With regard to other, unspecified, issues referred to in your letter, the Deputy Liquidator will review and respond to any additional written objections, demands or complaints that Mr. Solomon wishes to raise on a formal or informal basis.

Sincerely yours,

ZAUSMER, KAUFMAN, AUGUST  
& CALDWELL, P.C.

  
Amy S. Applin

ASA:dmt  
cc: Jim Gerber  
(00194968.DOCX)

## EXHIBIT 7

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

In the Matter of CADILLAC INSURANCE COMPANY,  
IN LIQUIDATION

---

BILL SCHUETTE, Attorney General  
of the State of Michigan, ex rel  
ANN E. FLOOD, Director of the  
Department of Insurance and Financial Services  
of the State of Michigan,

File No.: 89-64126-CR

Hon. William E. Collette

Petitioners,

vs.

CADILLAC INSURANCE COMPANY,  
a Michigan Corporation,

Respondent.

---

MARK J. ZAUSMER (P31721)  
Special Assistant Attorney General  
AMY SITNER APPLIN (P46900)  
ZAUSMER, KAUFMAN, AUGUST  
& CALDWELL, P.C.  
Attorneys for Petitioners  
31700 Middlebelt Road, Suite 150  
Farmington Hills, MI 48334  
(248) 851-4111

---

ORDER GRANTING LIQUIDATOR'S VERIFIED PETITION  
FOR FINDING OF COMPLIANCE WITH PRIOR COURT ORDERS,  
APPROVING FURTHER PLANS FOR CLOSURE OF THE ESTATE  
AND FOR RELATED RELIEF

At a session of said Court held in the City of Mason, County  
of Ingham, State of Michigan on: Dec. 18, 2013

PRESENT: HON. \_\_\_\_\_

CIRCUIT COURT JUDGE

**Factual Findings and Recitals**

The Court placed Cadillac Insurance Company ("Cadillac") in formal liquidation proceedings ("Receivership") under former Chapter 78 of the Michigan Insurance Code of 1956, MCL 500.7800 *et seq.*, by its order entered January 2, 1990 ("Liquidation Order");

The Court appointed, pursuant to statute, the then-Insurance Commissioner (n/k/a the Director of the Department of Insurance and Financial Services ("DIFS")) as Liquidator of Cadillac (the "Liquidator") and directed the Liquidator to take immediate possession of the assets of Cadillac and to administer those assets under the Court's general supervision;

The Liquidation Order by operation of law vested legal title to all assets and moneys of Cadillac in the Liquidator;

The Liquidator, or his predecessors, have, since the entry of the Liquidation Order on January 2, 1990, taken possession of Cadillac's assets, marshaled assets, compromised claims, mitigated liabilities, sought and received recoveries from various individuals and entities, made distributions of assets and administered the business of Cadillac as provided in former Chapter 78 of the Insurance Code of 1956;

The Court (through Ingham County Circuit Court Judges Carolyn Stell, Michael G. Harrison and William E. Collette) has supervised the Liquidation of Cadillac since January 2, 1990, and supervised the previous conservatorship of Cadillac, also under former Chapter 78 of the Michigan Insurance Code of 1956, beginning in 1989;

During the Receivership, the Court has had exclusive jurisdiction over creditor claims against Cadillac;

The Liquidator, with the Court's supervision and approval, has adjudicated creditor claims and has amicably resolved the priority and value of all such claims;

The Court has entered many orders throughout the course of the Receivership directing the actions of the Liquidator;

The Liquidator has implemented the orders of the Court and has made distribution, within the limits of available financial resources, to parties entitled to distributions thereunder;

The Court has supervised the implementation and application of its orders;

The Court has reviewed the Interim Reports and Accountings for the Receivership for the period of January 2, 1990, through September 30, 2013, which are on public file with the Ingham County Circuit Court, and which are incorporated and adopted herein by reference;

The Liquidator has filed a Verified Petition for Finding of Compliance with Prior Court Orders, Order Approving Further Plans for Closure of the Estate and for Related Relief ("Petition") and has served it on all persons/entities and/or their counsel who are known to have outstanding or ongoing claims, suits or controversies that affect or that are or may be affected by the Receivership proceeding, consistent with the prior orders of the Court regarding such service. Further, the Liquidator posted a copy of the Petition on the State of Michigan website along with the other Cadillac documents previously posted there;

The Court has reviewed the Petition and has heard argument on it;

No timely response or objection to the Petition was filed with the Court;

The Court has knowledge of the matters brought before the Court for review and approval;  
and

Having reviewed the Petition, the Court finds its averment of facts to be accurate and true.

### Order

This final Order is based upon the foregoing findings and the extensive and public record of these proceedings from January 2, 1990, to December 18, 2013.

The Court FINDS that service of the Petition and Notice of Hearing as specified in the Petition, in the Proof of Service filed simultaneously with the Petition and the supplemental Proof of Service filed with the Court is adequate, full, fair and sufficient notice of the bases for and relief sought therein by the Liquidator, that such notice is in compliance with applicable law, and that no other notice is required in connection with the Petition.

IT IS ORDERED that because no response of any type or kind to the Liquidator's Petition was filed with this Court by December 11, 2013, ALL OBJECTIONS TO THE LIQUIDATOR'S PETITION ARE COMPLETELY AND FOREVER BARRED.

IT IS FURTHER ORDERED that the Liquidator's Petition is GRANTED for the reasons stated herein and on the record.

IT IS FURTHER FOUND AND ORDERED that all actions taken or not taken by the Liquidator, the Deputy Liquidator, their respective predecessors and successors, the Receivership staff, agents, assigns, accountants, counsel for the Liquidator and/or for Cadillac from the inception of the liquidation proceeding through the date of this Order, have been properly executed, and that such actions meet, have met or will meet the requirements of former Chapter 78 of the Insurance Code, the prior orders of this Court and, in general, the law of the State of Michigan as ascertained by and reviewed by this Court from January 2, 1990, through the date of entry of this Order and, if in accordance with the terms of this Order, then also for any such other actions taken in connection with carrying out the mandates of or pursuant to this Order.

IT IS FURTHER ORDERED that all claims and actions against the Liquidator, the Deputy Liquidator and/or their respective predecessors, successors, officers, directors, agents, attorneys, accountants and assigns, for all actions taken or not taken, events and/or occurrences on or after January 2, 1990, through the date of entry of this final Order, and if in accordance with the terms of this final Order then also for any such other actions taken in connection with carrying out the

mandates of or pursuant to this final Order, are and shall be COMPLETELY AND FOREVER BARRED, whether such claims are reduced to judgment or not, liquidated or unliquidated, contingent or noncontingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, legal or equitable, or known or unknown.

IT IS FURTHER ORDERED that, consistent with MCR 2.604(B), this Court expressly DETERMINES that there is no just reason for delay and, therefore, the Court DIRECTS that ALL PRIOR ORDERS of this Court entered in this action (other than Orders already made final orders by their terms) ARE DEEMED TO BE FINAL ORDERS EFFECTIVE UPON ENTRY OF THIS ORDER.

IT IS FURTHER ORDERED that the Liquidator's plan for closure, as set forth in the Petition, is APPROVED, with the understanding that the plan will be implemented on substantially the terms presented to this Court, with adjustments as deemed necessary or prudent by the Liquidator, and which, in the aggregate are not materially different from or inconsistent with the plan presented in the Petition and approved herein.

IT IS FURTHER ORDERED that the transfers of unclaimed property consistent with MCL 500.8145(1) that are described in the Petition are APPROVED and RATIFIED.

IT IS FURTHER ORDERED that the Liquidator and the Deputy Liquidator are AUTHORIZED to execute such documents and take such other actions as may be required to implement the approved closure plan and this Order.

IT IS FURTHER ORDERED, pursuant to court rule, that the Court expressly DETERMINES that there is no just reason for delay, and therefore DIRECTS that this Order is a FINAL ORDER. See MCR 2.604(B); MCR 7.203(A); MCR 7.204(A).

**WILLIAM E. COLLETTE**  
\_\_\_\_\_  
CIRCUIT COURT JUDGE

# EXHIBIT 8



Mark J. Zausmer  
Richard C. Kaufman  
Gary K. August  
Michael L. Caldwell  
Michael C. Lewis  
Heldi D. Hudson  
Mischa M. Boardman\*  
Nicole M. Wright  
Matthew G. McNaughton  
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# Z|K|A|C

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Elizabeth R. Arnone  
Jason W. Baas  
Emily M. Ballenberger  
Michael D. Crow  
John C. Cusmano  
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Nathan J. Fink  
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Heather R. Pillot  
Michael A. Schwartz  
Devin R. Sullivan\*  
Lauren M. Wawrzyniak  
Darnella D. Williams  
James C. Wright\*  
Kyle T. Zwiren

December 18, 2013

## VIA EMAIL

Louis J. Porter, Esq.  
Fried Porter PLLC  
29800 Telegraph Road  
Southfield, MI 48034

RE: In the Matter of Cadillac Insurance Company, In Liquidation  
Commissioner of Insurance vs. Cadillac Insurance Company  
Case No. 89-64126-CR  
Our File No. 1080-0000L

Dear Mr. Porter:

Attached is the Order that was entered today by Judge Collette granting the Liquidator's Verified Petition for Finding of Compliance with Prior Court Orders, Approving Further Plans for Closure of the Estate and for Related Relief. Please note that Mr. Solomon's December 10, 2013, letter to Judge Collette (a copy of which was provided to us by the Court Clerk) was not received on or before December 11, 2013, as required and clearly stated in the Petition. Rather, the letter was received at the Court on December 12, 2013. Further, it was not served on counsel for the Liquidator. Therefore, Judge Collette did not consider it to be a timely objection to the Petition, and he entered the attached Order accordingly.

Also enclosed is the inventory of furniture and office accessories ("furniture") prepared by the Receivership staff as contemplated in the letter from the Receivership staff to Mr. Solomon dated October 15, 2013. The Receivership staff remains available to meet with EMS representatives at the Cadillac offices on Saturday, December 21, as confirmed in that letter. If EMS would like to pick up its furniture on that date, however, Mr. Solomon or another EMS representative needs to make direct contact with Ms. Aho at the Receivership office no later than 4:30 p.m. on Thursday, December 19, 2013, to confirm that the furniture will be picked up on December 21. If Ms. Aho does not hear from Mr. Solomon or another EMS representative by 4:30 p.m. tomorrow, the Receivership will assume that EMS does not intend to pick up the furniture on Saturday, December 21, and the staff will not be present on that date. In that event, EMS will need to contact Ms. Aho to make arrangements to pick up the furniture in accordance with the building requirements (as were previously explained to Mr. Solomon) on a Saturday after January 4, 2014.

The Receivership very much wants to work cooperatively with EMS to return its furniture consistent with the terms of the Furniture Agreement. However, the Court-approved schedule for closure of the estate

# ZKAC

Zausmer, Kaufman, August & Caldwell, P.C.  
ATTORNEYS & COUNSELORS

Louis J. Porter, Esq.

December 18, 2013

Page 2

dictates that the furniture be moved out of the suite promptly. If EMS does not make arrangements to timely pick up its furniture, the Receivership will be forced to consider that Mr. Solomon has abandoned the furniture and to act accordingly.

Please feel free to call me if you would like to discuss this issue. Preferably, however, EMS should work directly with the Receivership staff to make these arrangements.

Sincerely yours,

ZAUSMER, KAUFMAN, AUGUST  
& CALDWELL, P.C.



Amy S. Applin



ASA:dmt

Enclosures

cc: Ernest Solomon (via fax and first class mail)

Jim Gerber (via email)

Janice K. Aho (via email)

(00206129.DOCX)

EMS FINAL FURNITURE INVENTORY  
FOR PICK-UP FROM CADILLAC OFFICES  
SATURDAY, DECEMBER 21, 2013

- 8 filing unit racks - all assembled connected wall units 72" x 12"
- 4 5 drawer lateral file cabinets 36" x 18" grey medal finish
- 4 4 drawer lateral file cabinets 36" x 18" grey medal finish
- 2 storage cabinets 36"x 41 1/4" -grey medal finish
- 2 35" x 29" two drawer lateral file cabinets, mahogany finish
- 1 portable GE compact refrigerator - 24" wide 6.6 cu ft
- 2 England side chairs- black leather stainless steel frames
- 4 Metro Tiburon Series modular seating (armless)
- 1 Bernhardt Drum Table, 18" x 18" x 16" high
- 1 four drawer credenza 24" x 60" mahogany finish
- 1 round conference table 29" x 48" finish mahogany
- 1 Essex series desk 76" x 42" finish mahogany
- 1 Essex series matching credenza 87" x 19" finish mahogany
- 6 hickory business side chairs with cone bank
- 1 credenza unit 87" x 19" finish mahogany
- 2 David Edward pull up chairs, mauve fabric
- 4 David Edward pull up chairs, mauve pattern fabric
- 1 round conf table 48" x 24" finish mahogany, with glass
- 1 movable wall 72" x 10" grey medal with mahogany top  
includes left return of 48" x 24" back is 72"x 24" (workstation)
- 2 side chairs, chrome and fabric
- 1 42 round conf table with chrome ped base, with glass finish mahogany
- 1 70" x 35" single ped desk with right return 45"x 24"with back sect 75" x 35"
- 1 2 drawer lateral 60" x 25" (matches above) finish mahogany
- 1 Italian provincial arm chair - bottlegreen leather
  
- 7 desk chairs
- 6 plant containers

MISC ACCESSORIES AND EQUIPMENT

- 12 calculators/adding machines - mostly non-working(worn out)
- 8 wire baskets
- 3 desk blotters
- 1 tape dispenser grey
- 4 in/out plastic trays white
- 3 in/out baskets 2brass 1 chrome
- 2 scissors/letter opener holder - 1 brass (missing scissor) 1 chrome
- 1 brass desk vase
- 2 white waste baskets-1 brass waste basket
- 2 rolodex, 1 brass, 1 chrome
- misc. message holders, calendar holders, pen set, chrome and brass

EMS FURNITURE REMAINING AT CADILLAC OFFICES  
DECEMBER 22, 2013 THROUGH CLOSURE DATE IN FEBRUARY 2014

- 1 SINGLE PED DESK 72"X36" WITH PED ON THE RIGHT  
RETURN ON THE LEFT, 48"X24" WITH BACK PANEL  
FINISH IS MAHOGANY. W BLOTTER  
FOR USE BY CADILLAC'S ACCT, PLANTE-MORAN
  
- 1 RIGHT HAND SINGLE PED DESK 67 1/2" X 29 5/8"  
WITH LEFT RETURN 37 1/2"X 24 1/2"  
FINISH IS MAHOGANY. W BLOTTER  
FOR USE BY CADILLAC EMPLOYEE, J.AHO

NOTE: PREPARED BY J.AHO

I have made a diligent effort to return and identify each item being returned to EMS. If I have overlooked any item, it will be returned at the closure of Cadillac's office.

## EXHIBIT 9

MODE = MEMORY TRANSMISSION

START=DEC-18 15:53

END=DEC-18 15:55

FILE NO.=383

STN NO.	COMM.	STATION NAME/EMAIL ADDRESS/TELEPHONE NO.	PAGES	DURATION
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-ZAUSMER KAUFMAN -

\*\*\*\*\* UF-8000 v2 \*\*\*\*\* -ZAUSMER KAUFMAN - \*\*\*\*\* 1 248 851 0100- \*\*\*\*\*

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**Z|K|A|C**  
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## FACSIMILE COVER SHEET

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Jason W. Baas  
Emily M. Ballanberger  
Michael D. Crow  
John C. Cusmano  
Lynne S. DeBell  
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Lauren M. Wawrzyniak  
Darnella D. Williams  
James C. Wright  
Kyle T. Zwirn

**\*\*FOR IMMEDIATE DELIVERY\*\***

<b>NAME:</b> Ernest Solomon	<b>SENDER:</b> Amy S. Applin, Esq./Dawn Trombley
<b>FAX NUMBER:</b> (248) 737-1639	<b>DATE:</b> December 18, 2013
<b>COMPANY:</b>	<b>TOTAL NO. OF PAGES INCLUDING COVER:</b> 10
<b>PHONE NUMBER:</b>	<b>OUR FILE NO:</b> 1080-0000L
<b>RE:</b> Cadillac Insurance Company	<b>YOUR REFERENCE NUMBER:</b>

**COMMENTS:**

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If you do not receive all pages transmitted, please call the fax operator at 248-851-4111 as soon as possible.

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential or protected from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank you.

## EXHIBIT 10

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

In the Matter of CADILLAC INSURANCE COMPANY,  
IN LIQUIDATION

BILL SCHUETTE, Attorney General  
of the State of Michigan, ex rel  
ANN E. FLOOD, Director of the  
Department of Insurance and Financial Services  
of the State of Michigan,

File No.: 89-64126-CR

Hon. William E. Collette

Petitioners,

vs.

CADILLAC INSURANCE COMPANY,  
a Michigan Corporation,

Respondent.

MARK J. ZAUSMER (P31721)  
Special Assistant Attorney General  
AMY SITNER APPLIN (P46900)  
ZAUSMER, KAUFMAN, AUGUST  
& CALDWELL, P.C.  
Attorneys for Petitioners  
31700 Middlebelt Road, Suite 150  
Farmington Hills, MI 48334  
(248) 851-4111

**AFFIDAVIT OF AMY S. APPLIN**

STATE OF MICHIGAN     )  
                                      ) ss.  
COUNTY OF OAKLAND    )

AMY S. APPLIN, being first duly sworn, deposes and states as follows:

1. I am an attorney with the firm of Zausmer, Kaufman, August & Caldwell, P.C.



2. In that capacity I serve as an attorney for the estate of Cadillac Insurance Company in Liquidation ("Cadillac") and for its Receiver/Liquidator.

3. From and after January 8, 2014, at the direction of the Deputy Receiver of Cadillac, I have made multiple phone calls and sent multiple emails to Mr. Louis Porter, counsel to EMS Enterprises, Inc. ("EMS"), in an attempt to either obtain a commitment from EMS to pick up its furniture from the Cadillac receivership offices or to otherwise obtain an understanding of EMS's intentions with respect to the furniture.

4. I have had multiple telephone conversations with Mr. Porter on this subject.

5. During my last conversation with Mr. Porter, on January 23, 2014, Mr. Porter advised that Mr. Solomon did not intend to make arrangements to pick up the furniture. I then, via email dated January 23, 2014, asked Mr. Porter to have EMS state its position in writing.

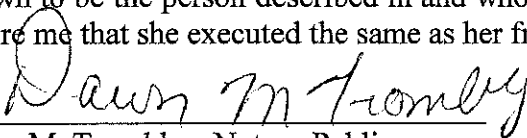
6. As of the date and time of execution of this Affidavit, I have received no response to my January 23, 2014, email or to subsequent voicemails to Mr. Porter following up on that email.

FURTHER AFFIANT SAYETH NOT.

  
AMY S. APPLIN

STATE OF MICHIGAN     )  
  ) ss.  
COUNTY OF OAKLAND    )

On the 3rd day of February, 2014, before me personally appeared Amy S. Applin, to me known to be the person described in and who executed the foregoing instrument, and acknowledged before me that she executed the same as her free act and deed.

  
Dawn M. Trombley, Notary Public  
State of Michigan, County of Macomb  
My commission expires: 10/20/16  
Acting in the County of Oakland

## EXHIBIT 11

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

FRANK J. KELLEY, Attorney General  
of the State of Michigan, ex rel DHIRAJ  
J. SHAH, Acting Commissioner of  
Insurance of the State of Michigan,

Petitioner,

Honorable Carolyn Stell

v

Case No. 89-64126-CR

CADILLAC INSURANCE COMPANY,  
a Michigan insurance company,

Respondent.

Frank J. Kelley, Attorney General  
By: Harry G. Iwasko, Jr. (P15364)  
Patricia Terrell Quinn (P34592)  
Assistant Attorneys General  
740 Law Building  
525 West Ottawa Street  
Lansing, MI 48913  
517-373-1160  
Attorneys for Petitioner

Zagaroli, Colpean & Venuto, P.C.  
By: Michael A. Zagaroli (P30178)  
230 N. Washington Square, Ste 306  
Lansing, MI 48933-1312  
517-372-0305  
Attorneys for Respondent

ORDER GRANTING APPOINTMENT  
OF PERMANENT LIQUIDATING RECEIVER

PERMANENT INJUNCTION

and

RELATED ORDERS GOVERNING LIQUIDATING RECEIVERSHIP

FILED

JAN 10 2 59 PM '90

CLERK  
INGHAM COUNTY  
LANSING, MICHIGAN

#100510  
SLO  
J

ORDER GRANTING APPOINTMENT  
OF PERMANENT LIQUIDATING RECEIVER

PERMANENT INJUNCTION

and

RELATED ORDERS GOVERNING LIQUIDATING RECEIVERSHIP

At a session of said Court held in the Circuit Court  
for the County of Ingham, State of Michigan, on the  
2nd day of January, 1990

Present: HONORABLE CAROLYN STELL, Circuit Judge

On reading the stipulation of the parties agreeing that the Temporary Conservator, Dhiraj N. Shah, Acting Commissioner of Insurance of the State of Michigan, should be appointed Liquidator of the Cadillac Insurance Company on January 2, 1990, and the Court being fully advised in the premises, therefore:

IT IS HEREBY ORDERED that in accordance with the laws of the State of Michigan, Cadillac Insurance Company is hereby found to be insolvent and the Acting Commissioner of Insurance, Dhiraj N. Shah, Temporary Conservator of the Cadillac Insurance Company, is hereby appointed the Liquidator of the Cadillac Insurance Company, and his designee, Jacqueline Reese, is hereby appointed Deputy Liquidator of the Cadillac Insurance Company in accordance with §§ 7814 and 7818 of the Insurance Code of 1956, as amended, and other applicable statutes, effective January 2, 1990.

IT IS FURTHER ORDERED that Petitioner shall forthwith cause to be filed with the record office of the County of Oakland, State of Michigan, a copy of this order suitable for recordation.

IT IS FURTHER ORDERED that in accordance with the laws of the State of Michigan, the Acting Commissioner of Insurance, Dhiraj N. Shah, as Liquidator, and his designee, Jacqueline Reese, as Deputy Liquidator, may take permanent possession of all properties and assets of Respondent wheresoever located, including but not limited to all property of whatsoever nature in the possession of its agents, assigns and all persons acting in concert with it, and of any nature whatsoever, including all bank deposits, accounts receivable, and all books, records, monies and effects of every kind and description, and to liquidate the business of Respondent so as to protect the interests of subscribers, creditors, and the people of this state. Title to all assets, properties and causes of action of Respondent, wheresoever located, is hereby transferred to and vested in the Commissioner of Insurance, as Receiver/Liquidator, pursuant to § 78114 of the Insurance Code of 1956, as amended. The Acting Commissioner of Insurance may deal with the property, causes of action and business of Cadillac Insurance Company in his own name as Acting Commissioner.

IT IS FURTHER ORDERED that Respondent, its board of directors, officers, agents and attorneys are hereby permanently enjoined and restrained from further transaction of Respondent's business and the disposition of Respondent's property, wheresoever located, except under the express direction of the Liquidator or his designee.

IT IS FURTHER ORDERED that all contracts for insurance, warranties and surety bonds issued by Cadillac Insurance Company that are in force on January 2, 1990 which do not expire by their terms or are not replaced

by the insured prior to February 1, 1990 are hereby terminated effective midnight February 1, 1990. The Receiver/Liquidator shall mail or deliver to the insured at the last known address within this state written notice of said cancellation as soon as practicable, but in no event not later than January 22, 1990.

IT IS FURTHER ORDERED that the Receiver/Liquidator and Deputy Receiver/Liquidator be authorized to incur and pay reasonable expenses to compensate clerks and assistants, as independent contractors, as necessary to aid in taking possession of and conducting the business of liquidating the Respondent. Such payments shall be made from receivership assets, on certificate of the Acting Commissioner of Insurance, pursuant to § 7824 of the Insurance Code of 1956, as amended, and set forth in regular accountings to the Court.

IT IS FURTHER ORDERED that the last day for filing claims with the Receiver/Liquidator shall be June 30, 1990.

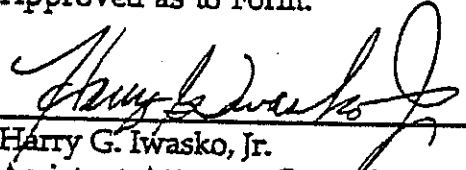
IT IS FURTHER ORDERED that the Receiver/Liquidator be authorized to incur and pay reasonable expenses for office space, if necessary, to conduct receivership duties, to obtain necessary office and equipment and supplies, and to incur and pay other related expenses in the normal performance of receivership responsibilities, to be paid out of receivership assets, all of which shall be set forth in regular accountings to this Court.


IT IS FURTHER ORDERED that the Receiver and Deputy Receiver be authorized to defend presently existing lawsuits pending against Cadillac Insurance Company if in the interests of Respondent, subscribers, creditors and the public, or to assign the defense of such lawsuits to the Property and Casualty Guaranty Associations and to cooperate in all manner and means with the Property and Casualty Guaranty Associations in handling

claims against the Cadillac Insurance Company and to transfer such assets of the Cadillac Insurance Company to the Property and Casualty Guaranty Associations as the Receiver determines are available for early distribution after the closing of the filing of claims against the estate and as further authorized by order of this Court.

  
CAROLYN STELL, Circuit Judge

Approved as to Form:

  
Harry G. Iwasko, Jr.  
Assistant Attorney General on behalf  
of Petitioner

  
Michael A. Zagoroff  
on behalf of Respondent

## EXHIBIT 12



## LIQUIDATIONS AND RECEIVERSHIPS

500.7814

### Library References

Insurance 72.12.

C.J.S. Insurance § 135.

### 500.7814. Liquidation; powers of commissioner as liquidator; notice; effective date of dissolution

Sec. 7814. (1) If, on like application and order to show cause, and after a full hearing, the court shall order a liquidation of the business of such corporation, such liquidation shall be made by and under the direction of the commissioner who may deal with the property and business of such corporation in his own name as commissioner or in the name of the corporation, as the court may direct, and shall be vested by operation of law with title to all the property, contracts and rights of action of such corporation as of the date of the order so directing him to liquidate.

(2) The filing or recording of such order in any record office of the state, shall impart the same notice that a deed, bill of sale or other evidence of title duly filed or recorded by such corporation would have imparted.

(3) The order of liquidation shall, unless otherwise directed by the court, provide that the dissolution of the corporation shall take effect upon the entry of such order in the office of the clerk of the county wherein such corporation had its principal office for the transaction of business.

### Historical Note

#### Source:

P.A.1956, No. 218, § 7814, Eff. Jan. 1, 1957.  
C.L.1948, § 500.7814.  
C.L.1970, § 500.7814.

#### Prior Laws:

P.A.1911, No. 216, § 4.  
C.L.1915, § 9293.  
P.A.1917, No. 256, Pt. 1, c. III, § 4.  
C.L.1929, § 12266.  
C.L.1948, § 503.4.

### Cross References

Effect of entry on register of deeds records, see § 565.25.  
Health maintenance organizations, takeover or liquidation, see § 333.21027.

### Library References

Insurance 72.5.  
C.J.S. Insurance § 133.

M.L.P. Insurance § 26.

### Notes of Decisions

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Petition 3  
Purpose of law 2  
Review 5

1. In general  
Sections 500.7802, 500.7806, 500.7810 and this section relating to liquidation and dissolution of domestic insurance companies provide alternative remedies by which insolvent insurance companies

500.7814

INSURANCE CODE OF 1956

may be put in custodianship of the insurance commissioner and may be liquidated, which remedies may be pursued in the same petition. *Gauss v. American Life Ins. Co.* (1939) 287 N.W. 368, 290 Mich. 33.

2. Purpose of law

The purpose of this section providing that liquidation of insurance corporation shall be made under direction of commissioner of insurance is to provide for efficient liquidation with least possible delay. *Toy ex rel. Ketcham v. Lapeer Farmers' Mut. Fire Ins. Ass'n* (1947) 27 N.W.2d 345, 318 Mich. 60.

3. Petition

Dealings by insurance company with its directors or other corporations with common directors should be carefully scrutinized on petition for liquidation of company, on ground that it is insolvent. *Adams ex rel. Blackford v. Mich-*

*igan Sur. Co.* (1961) 110 N.W.2d 677, 364 Mich. 299.

4. Conveyance by commissioner

Where statutory receiver of insolvent Michigan reserve life insurance company conveyed the naked legal title of company's realty to a re-insurer for purpose of managing, conserving, and liquidating the realty for company's policyholders, the realty was not "sold" and receiver's deeds were not subject to transfer tax. *Berry v. Kavanagh* (C.A.1943) 137 F.2d 574.

5. Review

Supreme court would review record de novo on appeal by attorney general and commissioner of insurance from judgment denying petition to liquidate insurance company, on ground that it was insolvent, and granting company's petition to discharge custodian. *Adams ex rel. Blackford v. Michigan Sur. Co.* (1961) 110 N.W.2d 677, 364 Mich. 299.

500.7818. Liquidation; powers of commissioner as receiver; accounting; bond

Sec. 7818. (1) The commissioner or his deputy or special deputy, acting under the provisions of this chapter in any liquidation proceedings, shall have all the powers of a receiver in insolvency proceedings, and may do and perform any act for the protection of the assets or the recovery of the same, and for the settlement or discharge of the obligations of the insurer, that may be necessary or that may be directed by the court.

(2) Such receiver shall in no case be permitted to increase the liabilities of any insurer undergoing liquidation excepting for the purpose of preserving its assets.

(3) He shall have the same authority to make assessments upon stockholders or members of the company as the officers thereof are authorized to make under the provisions of this code, and it shall be his duty to make such assessments, ratably in any case where authorized, to any extent that may be necessary to discharge the whole obligations, existing at any time during such receivership or insolvency proceedings. He may bring suit to recover and enforce such assessments in any court of competent jurisdiction against the members or stockholders, as the case may be, or, by direction of the court having jurisdiction of the liquidation, may bring such suit or suits in the circuit court without regard to the amount involved.

## LIQUIDATIONS AND RECEIVERSHIPS 500.7818

Note 2

(4) Such receiver shall be held accountable to the circuit court of the county having jurisdiction for his actions in the premises.

(5) The circuit court in the first instance may require the commissioner or the person acting as his deputy in the liquidation proceedings, to file a bond as in other receiverships.

### Historical Note

#### Source:

P.A.1956, No. 218, § 7818, Eff. Jan. 1, 1957.  
C.L.1948, § 500.7818.  
C.L.1970, § 500.7818.  
C.L.1897, §§ 7282, 7283.  
C.L.1915, §§ 9578, 9579.  
P.A.1917, No. 256, Pt. 1, c. III, §§ 7, 8.  
C.L.1929, §§ 12269, 12270.  
C.L.1948, §§ 503.7, 503.8.

#### Prior Laws:

P.A.1873, No. 82, §§ 17, 18.  
How. §§ 4263, 4264.

### Law Review Commentaries

Receivers; penalties on taxes. 29  
Mich.L.Rev. 237 (1930).

### Library References

Insurance Ⓒ72.6.  
C.J.S. Insurance §§ 133, 134.  
M.L.P. Insurance §§ 23, 26, 27, 119.

### Notes of Decisions

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#### 1. Validity

P.A.1873, No. 82, as amended (C.L. 1897, § 7282) authorizing a receiver of a mutual insurance company to sue the members thereof in the circuit court, where he was appointed, and authorizing the service of process in that and any other county, was valid. *Nichol v. Newman* (1910) 125 N.W. 760, 160 Mich. 582.

#### 2. Purpose of law

A reason for the enactment of § 500.7800 et seq. relating to liquidation and dissolution of domestic insurance companies was to prevent certain evils attendant upon proceedings for appointment of court receivers such as high and exorbitant fees paid to such receivers.

## 500.7818

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### Note 2

ers. *Gauss v. American Life Ins. Co.* (1939) 287 N.W. 368, 290 Mich. 33.

### 3. Insolvency—In general

So much of book value of realty as was attributable to sale of salvage items could not be considered asset of insurance company in determining its financial condition, on petition for liquidation of company on ground that it was insolvent, where such realty was acquired by direct purchase, contrary to § 500.948 (repealed) restricting acquisition of realty by insurance companies. *Adams ex rel. Blackford v. Michigan Sur. Co.* (1961) 110 N.W.2d 677, 364 Mich. 299.

Record established that attempted cancellation of \$405,000 liability owed by subsidiary Michigan insurance company to parent Indiana insurance company did not in fact satisfy liability, and that attempted cancellation could not be considered on petition to liquidate Michigan company, on ground that it was insolvent. *Id.*

All of the persons insured in a mutual company, including those who had suffered loss by fire, when they took the insurance understood that they were liable only to the amount of their premium notes; under How. § 4247 et seq., however, they became liable, in the event of the company becoming insolvent and a receiver being appointed, to pay all assessments laid by the receiver for the purpose of paying the losses and liabilities of the company, and the services and expenses of the receiver, in proportion to the amount of their insurance or interest in the company; on the company becoming insolvent, and the receiver appointed attempting to enforce their statutory liability, they were entitled to relief, on the ground of mistake of law. *Maclem v. Bacon* (1885) 24 N.W. 91, 57 Mich. 334.

### 4. — Remedies and proceedings on insolvency

A proceeding by a receiver of a mutual insurance association to impress a lien against a member for a delinquent assessment and for foreclosure thereof against the member's property stated a cause in equity which the petitioner was entitled to have tried in chancery

and the trial court erred in transferring cause to the law side of the court. *Berry v. Dehnke* (1942) 5 N.W.2d 505, 302 Mich. 614.

Trial court did not abuse its discretion in denying petition of objecting members and creditors to intervene in receivership proceeding against mutual fire insurance association, brought by attorney general on relation of commissioner of insurance, for purpose of opposing final account of a former receiver and for directions to successor receiver thereon, where it did not appear that any useful purpose would be served by permitting intervention, and it appeared that petition to intervene was but one of many dilatory steps being taken to delay proceedings. *Attorney General ex rel. Commissioner of Insurance v. Lapeer Farmers Mut. Fire Ins. Ass'n* (1942) 1 N.W.2d 557, 300 Mich. 320.

Judgment creditors of casualty insurance company were entitled to intervene in suit by insurance commissioner to take over company's assets, but intervention must be in subordination to commissioner's petition and order thereon. *Gauss v. Central West Casualty Co.* (1934) 253 N.W. 252, 266 Mich. 159.

### 5. — Distribution of assets on insolvency

Where a mutual fire insurance company issued farm risk policies and cash premium stock plan policies, both of which were void because issued in violation of C.L.1897, § 7256, the holders, on the insolvency of the insurance company, were entitled to a return of the unearned premium, under the equitable rule that, where a contract is invalid and the parties acted in good faith, they should be placed as near as possible in statu quo. *In re Citizens' Mut. Fire Ins. Co. of Holly* (1910) 127 N.W. 769, 162 Mich. 466.

### 6. Assessments—In general

Where statutory receiver of mutual fire insurance association was appointed, and method of settlement, including voluntary contributions of those who had not paid their assessments, and final account of receiver, were approved, and receiver was authorized to sell as-

sets of association to trustees for benefit of its creditors, suit by former members of association to vacate assessment orders on grounds of fraud, which was discovered in 1942, and not brought to light until 1948, when suit was instituted, was barred by laches. *Toy ex rel. Ketcham v. Lapeer Farmers' Mut. Fire Ins. Ass'n* (1950) 41 N.W.2d 888, 327 Mich. 333.

An assessment made by a receiver of an insolvent mutual fire, cyclone, or hail insurance company has the same effect as if made by the proper officers of the company before insolvency. *Berry v. Dehnke* (1942) 5 N.W.2d 505, 302 Mich. 614.

The receiver of a mutual insurance company could not levy assessments on members whose policies had expired over one year prior to appointment of receiver and over two years prior to filing of petition by receiver for authority to levy assessments, where, when custodian was appointed, neither company nor its officers could have imposed any such assessments. *Central Mut. Auto. Ins. Co. v. Gauss* (1940) 290 N.W. 808, 292 Mich. 309.

P.A.1873, No. 82, § 17 (C.L.1915, § 9578) making certain assessments on members of mutual company prima facie evidence of the regularity and correctness of proceedings up to and including the assessment, applied only to assessments made by receivers appointed by the court. *Michigan Mut. Windstorm Co. v. Goodrich* (1924) 196 N.W. 612, 225 Mich. 687.

#### 7. — Liability for assessments

A Michigan policyholder in Illinois mutual insurance company could not be held liable in Michigan suit for an assessment levied by receiver appointed to liquidate company by Illinois court, where no demand for payment of assessment was made within one year after termination of policy, though policyholder was insured within one year preceding liquidation proceedings. *Keehn v. Charles J. Rogers, Inc.* (1945) 18 N.W.2d 877, 311 Mich. 416, 161 A.L.R. 983, certiorari denied 66 S.Ct. 491, 326 U.S. 797, 90 L.Ed. 485.

On the question of liability of members to assessment by receiver, acts of

mutual fire insurance association after expiration of association's certificate of authority were binding upon former members who continued as members, until appointment of receiver. *Toy ex rel. Ketcham v. Lapeer Farmers' Mut. Fire Ins. Ass'n* (1941) 297 N.W. 232, 297 Mich. 174.

Members of mutual fire insurance association who continued as members after expiration of association's certificate of authority were liable for assessments covering the period from such expiration up to time of instituting receivership proceeding. *Id.*

Where order appointing receiver for insurance company authorized him to levy assessment "computed on each year in which a deficiency occurred" from 1930 to 1935, pro rata "against those persons who were members" during such years, and to reassess members who had failed to pay company assessments of former years, assessment for 1930 calculated on total liabilities at end of 1930, irrespective of when liabilities occurred, including renewal notes for money borrowed in former years and interest thereon, was invalid and unenforceable since it made recent members bear burden of old debts, contrary to terms of order. *Simpson v. Goodrich* (1937) 273 N.W. 595, 280 Mich. 351.

Where a mutual fire insurance company was authorized to issue policies on a cash premium basis, such policies containing a clause that they were subject to the conditions of the company's charter and the act under which it was organized, as to liability of members to assessments for losses incurred, the holders were liable for assessments levied by the receiver of the company on insolvency; such holders being regarded as members of the company. *Ely v. Oakland Circuit Judge* (1910) 125 N.W. 375, 162 Mich. 466, modified in other respects 127 N.W. 769, 162 Mich. 486.

A limitation in a contract of a stockholder with a mutual fire insurance company could not relieve him from liability to pay a proportionate share of losses and expenses of the company for the period during which he was a member, when the company's affairs are closed up by a receiver. *Nichol v.*

## Note 7

Murphy (1906) 108 N.W. 704, 145 Mich. 424.

P.A.1887, No. 187, § 15, authorized mutual benefit associations to make assessments to pay death claims; and section 22 provided that, on winding up the affairs of such association, a receiver may be appointed to continue the business for the purpose of paying all such claims which have accrued at the time of his appointment, and that he may assess all members liable therefor. It was held that a policy holder in such an association at the time a petition for dissolution was filed was liable to the receiver for assessments levied by him to pay death claims which had accrued at the time of such petition. *Calkins v. Angell* (1900) 81 N.W. 977, 123 Mich. 77.

Members of a mutual fire insurance company, if liable at all for assessments made by a receiver made under P.A. 1873, No. 82, could be made so only by the contract existing between them and the corporation which contract was evidenced by the application and the policy. *Wardle v. Hudson* (1893) 55 N.W. 992, 96 Mich. 432.

Under How. § 4247 et seq., in case of insolvent insurance companies, receivers are only authorized to "assess the members and persons insured." Where defendant was assessed the amount claimed subsequent to the surrender and cancellation of his policy, he could not be held liable therefor. *Tolford v. Church* (1887) 33 N.W. 913, 66 Mich. 431.

## 8. — Enforcement of assessments

In a suit by the receiver of an insolvent mutual fire insurance company to impress a lien for an assessment and provide for its foreclosure against the insured property, a complaint setting forth the execution, date and amount of the policy, premiums paid or to be paid, property insured, interest of the insured therein, and loss was sufficient notwithstanding plaintiff's failure to attach a copy of the policy to the complaint. *Berry v. Dehnke* (1942) 5 N.W.2d 505, 302 Mich. 614.

Where an assessment by a receiver of a mutual insurance company was excessive, adequate relief may be had by

vacating it or by securing a proper distribution of the funds raised thereby, and a bill of review did not lie. *Daniel v. Citizens' Mut. Fire Ins. Co. of Jackson* (1907) 113 N.W. 17, 149 Mich. 626.

An order of a court of chancery, made pursuant to C.L.1897, § 7331, levying an assessment on the members of a mutual insurance company, and fixing the proportionate amount to be paid by each of such members, after adjudging the company insolvent, and appointing a receiver under such section could not be collaterally attacked by a member on the ground that the assessment was excessive, in an action by the receiver to enforce the assessment. *Collins v. Welch* (1905) 105 N.W. 31, 141 Mich. 676.

The fact that a policy holder in a mutual fire insurance company, after he had canceled his policy, was sued on an assessment for losses and expenses incurred during the life of his policy, and settled such claim, was not a defense to an action brought against him by the receiver of the company on an assessment to cover a deficiency in the sum necessary to pay such losses and expenses, resulting from the fact that the former assessment included persons who were not liable thereon. *Cavanagh v. Connon* (1900) 82 N.W. 523, 123 Mich. 685.

## 9. — Offset, assessments

Where cash premium policy holders in a mutual fire insurance company were liable to assessment on the company's insolvency, they were entitled to offset the unearned premium on their policies. *Ely v. Oakland Circuit Judge* (1910) 125 N.W. 375, 162 Mich. 466, modified in other respects, 127 N.W. 769, 162 Mich. 466.

## 10. Liquidation and receivership—In general

It was not presently necessary to grant petition of commissioner of insurance for appointment of receiver to liquidate insurance company, which for purpose of petition for liquidation had been found insolvent, where certain assets held by company had value, even if they could not be considered in determining company's solvency on petition for liquidation, and there was dis-

closed willingness by those in control of company and related companies to reduce company's intercorporate liabilities. *Adams ex rel. Blackford v. Michigan Sur. Co.* (1961) 110 N.W.2d 677, 364 Mich. 299.

Section 500.7802 et seq. relating to liquidation and dissolution of domestic insurance companies provide alternative remedies by which insolvent insurance companies may be put in custodianship of the insurance commissioner and may be liquidated, which remedies may be pursued in the same petition. *Gauss v. American Life Ins. Co.* (1939) 287 N.W. 363, 290 Mich. 33.

The petition filed by the commissioner of insurance under P.A.1873, No. 82, § 15, as the foundation of proceedings to wind up the business of a mutual fire insurance company, need not be verified. *Wardle v. Cummings* (1891) 49 N.W. 212, 86 Mich. 395, rehearing denied 49 N.W. 538, 86 Mich. 395.

Under P.A.1873, No. 82, as amended by P.A.1877, Nos. 66, 142, relative to winding up insolvent mutual insurance companies, and providing that the receiver of such a company shall assess on all the members and persons insured therein such sums as will, in the aggregate, suffice to pay its losses and liabilities, in proportion to their insurance or interest in the company, the liability of persons insured to meet their proportion of such assessments cannot be avoided by any arrangements entered into with the company whereby the insured seeks to limit such liability, nor can it be lessened by any provisions in the articles of association. *Russell v. Berry* (1883) 16 N.W. 651, 51 Mich. 287.

#### 11. — Rights and liabilities of liquidator or receiver

Court rule regarding sale of assets by receiver in suit on creditor's bill is not applicable to receiver of insurance company whose rights and duties are defined by this section. *Toy ex rel. Ketcham v. Lapeer Farmers' Mut. Fire Ins. Ass'n* (1947) 27 N.W.2d 345, 318 Mich. 60.

Question whether insurance commissioner, acting in his capacity as statutory receiver of defunct insurance association, was liable for possible mistake

of judgment in not having gone to expense of bringing suit against officers and directors of association when it appeared that chances of recovery were most remote, was academic in view of fact that decree approving plan for terminating receivership preserved right of nonassenting creditors and dissatisfied members of association, who had paid assessments in full, to proceed against all of receivers and deputy receivers, excepting only incumbents, at their own expense. *Id.*

A receiver of insolvent insurance company derives his authority from this section, and cannot act in contravention of or beyond this section, and, though he may ask advice of court on an ex parte petition, the order confers no additional authority. *Toy ex rel. Ketcham v. Lapeer Farmers Mut. Fire Ins. Ass'n* (1941) 297 N.W. 232, 297 Mich. 174.

Under P.A.1873, No. 82, § 17, the receiver of an insolvent mutual insurance company may maintain an action against a policy holder, who canceled his policy before the appointment of the receiver, on an assessment to cover a deficiency in the losses and expenses incurred while his policy was in force, regardless of prior assessments paid by him for the purpose of paying such losses. *Peake v. Yule* (1900) 82 N.W. 514, 123 Mich. 675.

Any defense which a member might make against an action brought by the company to recover an assessment made by the board of directors is equally available in an action by the receiver. *Wardle v. Hudson* (1893) 55 N.W. 992, 96 Mich. 432.

A receiver of a fire insurance company organized under P.A.1873, No. 82, relating to the incorporation of mutual fire insurance companies, derived his authority to make assessments directly from P.A.1873, No. 82, and, while proper to ask the advice of the court of which he is an officer on an ex parte petition, the order obtained confers no additional authority, and, if he acts beyond or in contravention of P.A.1873, No. 82, his acts might be questioned the same as if no such order had been made. *Wardle v. Townsend* (1889) 42 N.W. 950, 75 Mich. 385, 4 L.R.A. 511.

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### Note 12

#### 12. — Actions by or against liquidator or receiver

Under How. § 8964, subd. 5, providing that defendant should recover costs when plaintiff obtained judgment for less than \$100, and section 4263, providing that, in case one insured in a mutual fire company should neglect to pay an assessment, the receiver of the company may sue for it in the circuit court wherein he was appointed, in his own name, and the assessment should be prima facie evidence of its own regularity, and of the receiver's right to recover, with costs, the receiver in a successful action recovers his costs, although the judgment be for less than \$100. *Wardle v. Townsend* (1889) 42 N.W. 950, 75 Mich. 385, 4 L.R.A. 511; *Bacon v. Clyne* (1888) 38 N.W. 207, 70 Mich. 183.

In insurance association receivership, decree providing that, on filing of receiver's final account and receipts, receiver and his deputy should be automatically discharged, required the receiver, as a condition precedent to his discharge, to file a final account which should be acceptable to court and account would be acceptable to court only after proper notice to interested parties who should have an opportunity to be heard thereon. *Toy ex rel. Ketcham v. Lapeer Farmers' Mut. Fire Ins. Ass'n* (1947) 27 N.W.2d 345, 318 Mich. 60.

A receiver of insolvent mutual fire insurance association would not be ordered to intervene in case involving

claim by association's former secretary-treasurer for compensation, where attorney general, in whose name the receivership proceeding was instituted, was also plaintiff in case involving secretary-treasurer's claim. *Toy ex rel. Ketcham v. Lapeer Farmers Mut. Fire Ins. Ass'n* (1941) 297 N.W. 232, 297 Mich. 174.

#### 13. — Termination of liquidation or receivership

Where decree approved plan for termination of insurance association receivership by transfer of assets to creditors' trustee and authorized discharge of receiver upon approval of his final account, record established that there were no assets coming into the possession of the receiver other than those disclosed to the court at the hearing, and that the receiver's account was properly approved. *Toy ex rel. Ketcham v. Lapeer Farmers' Mut. Fire Ins. Ass'n* (1949) 39 N.W.2d 214, 325 Mich. 655.

Decree approving plan for termination of insurance association receivership by transfer of assets to creditors' trustees in consideration of discharge of creditors' claims did not impair contract existing between creditors and association by attempting to substitute creditors' trustees for statutory liquidator, since the plan did not constitute an abandonment of statutory duties of commissioner of insurance. *Toy ex rel. Ketcham v. Lapeer Farmers' Mut. Fire Ins. Ass'n* (1947) 27 N.W.2d 345, 318 Mich. 60.

## 500.7819. Recovery of distributions to affiliates

Sec. 7819. (1) If a receiver is appointed in delinquency proceedings in any court in this state for an insurer domiciled in this state, the receiver may recover on behalf of the insurer, from any affiliate of the insurer, all amounts distributed at any time during the 5 years preceding the petition for liquidation or rehabilitation, subject to the limitations prescribed in subsections (2) and (3).

(2) Dividends shall not be recoverable under subsection (1) if the insurer or the affiliate from whom the recovery is sought shows that, when paid, the distributions were lawful and reasonable and that the insurer and the affiliates did not know and could not reasonably have